

Matthew Alexander Nielson; J.Z., a Minor)
Under age 18 by his Parent & Guardian)
Michelle Stephens; D.M., a Minor Under age)
18 by her Parent & Guardian Victoria Reed;)
the Freedom From Religion Foundation, Inc.,)
)
Plaintiffs,)
)
v.)
)
)
)
)
School District Five of Lexington & Richland)
Counties; Board of Trustees of School)
District Five of Lexington and Richland)
Counties; Dr. Stephen W. Hefner, in his)
official capacity as School District Five)
Superintendent; and Mr. Robert Gantt in his)
official capacity as School District Five)
Board Chairperson,)
)
Defendants,)
)

Civil Action No. 3:12-cv-01427-CMC

MOTION OF ATTORNEY GENERAL
FOR LEAVE TO FILE
SECOND SUPPLEMENTAL
AMICUS MEMORANDUM

Without objection from the parties, Attorney General Alan Wilson hereby moves for leave to file by June 27, 2014, a Second Supplemental Memorandum in Support of the constitutionality of S.C. Code Ann. §6-1-160, the statute upon which the Board of Trustees of School District Five has based its invocation policy at issue in this case. This date is scheduled by the Court for supplemental replies by the parties to supplemental cross-briefs. Text Order of May 7, 2014 (Document Number 84). *See also*, Status Report (Document Number 85).

This Court has previously allowed the Attorney General to file a memorandum and a supplemental memorandum regarding that constitutional issue. Text Orders of December 2, 2013 (Document No. 65) and January 22, 2014 (Document Numbers 73 and 74). The Attorney

General filed memoranda in response to those Orders (Document Numbers 64-1 and 75) which specifically referenced the *Town of Greece v. Galloway* case then pending at the United States Supreme Court and attached his amicus brief in that case.

This Court deferred ruling in this case until after the Supreme Court issued an opinion in *Town of Greece*. Text Order of February 20, 2014 (Document Number 82). Now that the Supreme Court has issued its Opinion, the Attorney General would like to address further the constitutional issue in the instant case including discussion of the *Greece* decision as it relates thereto. See Text Order of May 7 and Status Report of the parties, May 21, 2014; *Town of Greece, N.Y. v. Galloway*, 12-696, 2014 WL 1757828 (U.S. May 5, 2014)

By filing his Memorandum on or before June 27, the Attorney General can respond to any points of the parties regarding the constitutional issue. Therefore, the Attorney General respectfully requests permission to submit a Second Supplemental Amicus Memorandum.

Respectfully submitted,

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/s/ J. Emory Smith, Jr.
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Counsel for the Attorney General

Rule 6.01, D.S.C. CONSULTATION

Undersigned counsel hereby confirms that he consulted with counsel for the other parties and that they do not object to this motion.

/s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR
Deputy Solicitor General

May 23, 2014